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Investigation
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March 1, 2021

MEMORANDUM TO: Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Affirmative
Determination in the Less-Than-Fair-Value Investigation of
Common Alloy Aluminum Sheet from Egypt

I. SUMMARY

The Department of Commerce (Commerce) finds that common alloy aluminum sheet (aluminum sheet) from Egypt is being, or is likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The period of investigation (POI) is January 1, 2019, through December 31, 2019.

After analyzing the comments submitted by interested parties, we made changes to the *Preliminary Determination*.¹ We recommend that you approve the positions described in the “Discussion of the Issues” section of this memorandum. Below is a complete list of the issues for which we received comments from interested parties:

- Comment 1: International Freight Expenses (INTNFRU)
- Comment 2: Freight Revenue Cap (FREIGHTREVVH)
- Comment 3: Inland Freight to The Port of Exportation (DINLFTPU)
- Comment 4: U.S. Credit Expenses
- Comment 5: Interest Expense Ratio

II. BACKGROUND

On October 15, 2020, Commerce published in the *Federal Register* the preliminary affirmative determination in the LTFV investigation of aluminum sheet from Egypt.

¹ See *Common Alloy Aluminum Sheet From Egypt: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures*, 85 FR 65382 (October 15, 2020) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum (PDM).



On November 6, 2020, Commerce issued an in-lieu-of-on-site verification questionnaire to Aluminium Co. of Egypt (Egyptalum) and Egyptian Copper Works (Egypt Copper), (collectively, Egyptalum-Egypt Copper) to which it timely responded.² We received briefs³ and rebuttal briefs⁴ on December 9 and December 16, 2020, respectively. No parties requested a hearing.

III. CHANGES SINCE THE PRELIMINARY DETERMINATION

- We set all international freight expenses equal to the highest international freight expense reported for any U.S. sale.⁵
- We set all plant to port freight expenses equal to the highest plant to port expense reported for any U.S. sale.⁶
- We corrected the U.S. credit expenses reported for three sales.⁷

IV. DISCUSSION OF THE ISSUES

Comment 1: International Freight Expenses (INTNFRU)

Petitioner's Argument:

- Commerce should base Egyptalum-Egypt Copper's international freight expenses (the INTNFRU field) on adverse facts available (AFA) because it failed to support the reported expenses in its questionnaire, supplemental questionnaire,⁸ and verification questionnaire responses.⁹
- Use of AFA is warranted because necessary information related to international freight expenses is missing from the record, the reported expenses differ from source documentation,¹⁰ and the reported expenses are not verifiable.¹¹ Egyptalum-Egypt

² See Commerce's Letter to Egyptalum-Egypt Copper-Egypt Copper, dated November 6, 2020 (Commerce's Remote Verification Questionnaire); see also Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Remote Verification Questionnaire Response," dated November 16, 2020,.

³ See Petitioners' Letter, "Common Alloy Aluminum Sheet from Egypt – Petitioner's Case Brief," dated December 9, 2020 (Petitioner's Case Brief).

⁴ See Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt—Rebuttal Brief," dated December 16, 2020 (Egyptalum-Egypt Copper-Egypt Copper's Rebuttal Brief).

⁵ See Memorandum, "Antidumping Duty Investigation of Common Alloy Aluminum Sheet from Egypt: Final Determination Margin Calculation for Egyptalum-Egypt Copper-Egypt Copper," dated concurrently with this memorandum (Egyptalum-Egypt Copper-Egypt Copper's Calculation Memorandum).

⁶ *Id.*

⁷ *Id.*

⁸ See Petitioners' Case Brief at 9-12.

⁹ *Id.* at 7-9; see also Commerce's Remote Verification Questionnaire for Egyptalum-Egypt Copper-Egypt Copper-Egypt Copper, dated November 6, 2020 (Commerce's Remote Verification Questionnaire); and Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Remote Verification Questionnaire Response," dated November 16, 2020 (Egyptalum-Egypt Copper-Egypt Copper's Remote Verification QR).

¹⁰ *Id.* at 9-12.

¹¹ *Id.*

Copper failed to cooperate in, and impeded, this proceeding with respect to these expenses.¹²

- Commerce should use the highest reported INTNFRU expense as AFA.¹³

Egyptalum-Egypt Copper's Rebuttal Argument:

- AFA is not warranted¹⁴ because Egyptalum-Egypt Copper fully cooperated in the investigation, completely responded to Commerce's initial and supplemental requests for information, and reported complete and usable INTNFRU expenses.¹⁵
- In its response to Commerce's Remote Verification Questionnaire, Egyptalum-Egypt Copper documented a slight miscalculation of the per-unit INTNFRU expenses reported for two U.S. sales.
- This does not justify applying partial AFA¹⁶ because: (1) there is no evidence that these errors affect other U.S. sales;¹⁷ (2) the Court of International Trade (CIT) and the Court of Appeals for the Federal Circuit (CAFC) found applying an adverse inference for "isolated" errors is unreasonable;¹⁸ and (3) Commerce's practice is to correct the affected transactions where isolated errors are discovered at verification.¹⁹
- Here, there is no evidence to suggest that the erroneous INTNFRU expenses reported for two U.S. sales affect the INTNFRU expenses reported for all other U.S. sales.

¹² *Id.*, noting that the U.S. Court of International Trade (CIT) has held that purposefully withholding information requested is grounds for the application of facts available under section 776(a) of the Act and is also grounds for application of adverse facts available under section 776(b) of the Act; *see, e.g., Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1343 n.6, 1344-45, 1348 n.13 (CCIT 2005); and *Strontium Chromate from France: Final Affirmative Determination of Sales at Less Than Fair Value and Final Negative Determination of Critical Circumstances*, 84 Fed. Reg. 53,678 (October 8, 2019), and accompanying Issues and Decision Memorandum (IDM) at 5-6 (Comment 1).

¹³ *Id.*

¹⁴ *See* Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt—Rebuttal Brief," dated December 16, 2020 (Egyptalum-Egypt Copper-Egypt Copper's Rebuttal Brief) at 1-2.

¹⁵ *Id.* at 2.

¹⁶ *Id.* at 2-4.

¹⁷ *See* Egyptalum-Egypt Copper-Egypt Copper's Rebuttal Brief at 4.

¹⁸ *See, e.g., Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 276 F.Supp.2d 1371 (CIT 2003), in which the CIT noted that ". . . it would be unfair to a respondent if Commerce were permitted to extrapolate from a single error, which may well have been an isolated oversight, a conclusion that the entirety of the respondent's submissions concerning other classes of subject merchandise are unreliable." *See also Nippon Steel v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003), in which the court has recognized that "mistakes sometimes occur" that do not necessarily justify the use of an adverse inference, and *NTN Bearing Corp.*, 74 F.3d 1204, 1208 (Fed. Cir. 1995), in which the CAFC noted that while "parties must exercise reasonable care in their submissions, it is unreasonable to require perfection."

¹⁹ *See, e.g., Fischer S.A. v. United States*, 700 F.Supp.2d 1364, 1375 (CIT 2010) (explaining, with respect to corrections presented at verification, that "at the preliminary results stage, Commerce abuses its discretion where it refuses to let a respondent establish an accurate dumping margin by correcting mistakes in its response."); and *Goodluck India Ltd. v. United States*, 393 F. Supp. 3d 1352, 1356-58, 1363-69 (CIT 2019) (discussing corrections to minor errors at the outset of verification and holding that the respondent was permitted to "rectify reporting mistakes contained in its previous submission to the record").

- Absent substantial evidence that errors affect all transactions, Commerce should not apply AFA across all transactions²⁰ but should correct the per-unit international expenses reported for the two sales examined for verification.²¹

Commerce's Position:

We agree with the petitioners. Sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act.

Section 776(b) of the Act provides that, if an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.²² In so doing, Commerce is not required to determine, or make any adjustments to, estimated dumping margins based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.²³ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”²⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁵ It is Commerce’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.²⁶

As explained below, necessary information is missing from the record, Egyptalum-Egypt Copper withheld information requested by Commerce, and information that was provided could not be

²⁰ See, e.g., *Hyundai Heavy Industries et al. v. United States*, Consol. Ct. 18-00066, Slip Op. 20-165 (CIT November 18, 2020) at 31 (rejecting use of AFA because the “reporting deficiencies identified by Commerce, the failure to report the sales of two parts, are limited to ‘discrete categories of information.’”) (citation omitted).

²¹ See Egyptalum-Egypt Copper-Egypt Copper’s Rebuttal Brief at 4.

²² See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

²³ See section 776(b)(1)(B) of the Act.

²⁴ See SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; and *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

²⁵ See, e.g., *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless-Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Preamble*, 62 FR at 27340.

²⁶ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying IDM at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

verified. Therefore, use of facts available pursuant to sections 776(a)(2)(A) and (D) of the Act is warranted.

In its initial questionnaire, Commerce requested that Egyptalum-Egypt Copper explain the method it used to report INTNFRU expenses and provide support documentation and worksheets showing how it calculated per-unit international freight expenses.²⁷ In response to Commerce's request, Egyptalum-Egypt Copper provided a freight invoice, without an explanation of the method used to report INTNFRU expenses or worksheets showing how it calculated the reported per-unit international freight expenses, as Commerce requested.²⁸

Thus, in a supplemental questionnaire, Commerce again requested that Egyptalum-Egypt Copper provide source documentation and worksheets explaining how it calculated the per-unit INTNFRU expenses reported for certain U.S. sales.²⁹ In response to this request, Egyptalum-Egypt Copper again provided only freight invoices and shipping documentation,³⁰ and failed to provide the requested worksheets explaining how it calculated the reported per-unit INTNFRU expenses.³¹ It was particularly important for Egyptalum-Egypt Copper to explain its calculations and provide worksheets showing how it calculated the reported per-unit INTNFRU expenses because the freight invoices and shipping documentation provided in Exhibit SSQ-24 of the aforementioned supplemental questionnaire response, do not support the international freight expenses reported for the two U.S. sales for which support documentation and worksheets were requested.³²

Commerce asked for support documentation and worksheets for reported international freight expenses again in its Remote Verification Questionnaire. In that questionnaire, we requested that Egyptalum-Egypt Copper provide support documentation and worksheets showing how it calculated the per-unit INTNFRU expenses reported for two additional U.S. sales.³³ Again, Egyptalum-Egypt Copper provided freight invoices and shipping documentation, but failed to provide the requested worksheets showing how it calculated the international freight expenses for both of the U.S. sales being verified.³⁴

Moreover, the international freight expenses reported for these two U.S. sales could not be verified. The per-unit freight expenses derived from the freight invoices and shipping documentation submitted in response to Commerce's Remote Verification Questionnaire do not agree with the per-unit INTNFRU expenses reported for these two U.S. sales. Also, Egyptalum-Egypt Copper failed to explain the discrepancy between its reported per-unit INTNFRU expenses and the per-unit freight expenses derived from the freight invoices and shipping documentation for said transactions.

²⁷ See Commerce's Antidumping Questionnaire to Egyptalum-Egypt Copper-Egypt Copper at C-18, dated April 14, 2020.

²⁸ See Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Response to Sections B and C of the Antidumping Questionnaire," dated June 10, 2020, at C-32 to C-33 and Exhibit C-9.

²⁹ See Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Response: Response to the Supplemental Section B and Section C Questionnaire," dated August 18, 2020 (SBCQR) at C-24 to C-25 and Exhibits SSQ-23 and SSQ-24.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ See Commerce's Remote Verification Questionnaire at 3-4.

³⁴ See Egyptalum-Egypt Copper-Egypt Copper's Remote Verification QR at Exhibit 6.

Verification involves spot checking reported information to determine its accuracy and reliability. The Remote Verification Questionnaire provided Egyptalum-Egypt Copper with the opportunity to demonstrate the reliability of its reported international freight expenses. Given the discrepancies described above, and the lack of any explanation for them, the results of verification do not provide a basis for determining that, as a whole, the reported per-unit international freight expenses are reliable.

Also, we find that Egyptalum-Egypt Copper failed to act to the best of its ability in responding to Commerce's requests for information. In *Nippon Steel*, the UCAFC held that, while the statute does not provide an express definition of the "failure to act to the best of its ability" standard, the ordinary meaning of "best" is "one's maximum effort."³⁵ Thus, according to the CAFC, the statutory mandate that a respondent act to the "best of its ability" requires the respondent to do the maximum it is able to do.

Additionally, the CAFC indicated that inadequate responses to an agency's inquiries would suffice to find that a respondent did not act to the best of its ability. While the CAFC noted that the "best of its ability standard" does not require perfection, it does not condone inattentiveness, carelessness, or inadequate record keeping.³⁶ The "best of its ability" standard recognizes that mistakes sometimes occur; however, it requires a respondent to, among other things, "have familiarity with all of the records it maintains," and "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of" its ability to do so.³⁷

Egyptalum-Egypt Copper failed to cooperate to the best of its ability because it: (a) failed to provide the calculation worksheets repeatedly requested by Commerce; (b) did not explain its per-unit INTNFRU expense calculation in order to resolve discrepancies between support documentation and what was reported; and (c) provided supporting documentation for verification that does not agree with the reported expenses but never resolved the discrepancies. As noted above, inadequate responses to Commerce's inquiries is sufficient to find that a respondent did not act to the best of its ability.

Therefore, we used an inference adverse to the interests of Egyptalum-Egypt Copper in selecting from among the facts otherwise available pursuant to section 776(b) of the Act. Specifically, as AFA, we set all reported INTNFRU expenses equal to the highest reported INTNFRU expense for any U.S. sale.³⁸

³⁵ See *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003) (*Nippon Steel*).

³⁶ *Id.*, 337 F.3d at 1382.

³⁷ *Id.*

³⁸ See Egyptalum-Egypt Copper-Egypt Copper's Calculation Memorandum at 3.

Comment 2: Freight Revenue Cap (FREIGHTREVVH)*Petitioners' Argument:*

- Based on Commerce's established practice,³⁹ it should cap Egyptalum-Egypt Copper's home market freight revenues using not only inland freight expenses (*i.e.*, variables INLFTWH + INLFTCH)⁴⁰ but also warehousing expenses because Egyptalum-Egypt Copper used distribution warehouses for home market aluminum sheet sales.

No other interested parties commented on this issue.

Commerce's Position:

We disagree with the petitioners. Commerce's normal practice is to cap freight revenue by the amount of the corresponding freight expense.⁴¹ Thus, in order to cap freight revenue by warehousing expenses, in addition to freight expenses, there must be some evidence that the revenue was charged not only for freight but also warehousing. However, there is no record evidence linking home market freight revenue to warehousing services. In its Section B questionnaire response, Egyptalum-Egypt Copper stated that home market freight revenue relates only to freight expenses.⁴² Egyptalum-Egypt Copper provided documents to support this statement.⁴³ Therefore, we have continued to cap freight revenue by inland freight expenses.

Comment 3: Inland Freight to the Port of Exportation (DINLFTPU)*Petitioners' Argument:*

- Commerce should base Egyptalum-Egypt Copper's plant to port freight expenses (the DINLFTPU field) on AFA⁴⁴ because it failed to provide calculation worksheets and source documents supporting the expense in response to Commerce's Remote Verification Questionnaire.⁴⁵

³⁹ See Petitioners' Case Brief at 24 (citing *Certain Cold-Rolled Steel Flat Products from Korea: Final Determination of Sales at Less Than Fair Value*, 81 Fed. Reg. 49,953 (July 29, 2016), and accompanying IDM at 28 (Comment 8), in which Commerce states "{i}t is evident the warehousing is simply part of the delivery process from the plant to the customer's final destination, and is among the options POSCO considers when trying to minimize its cost of shipping the merchandise to the ultimate customer destination. Therefore, we determined that it is reasonable to treat the warehousing expenses as part of the total movement expenses used in the calculation of the freight revenue cap, and we continue to do so for the final determination."

⁴⁰ See Memorandum, "Less-Than-Fair Value Investigation of Common Alloy Aluminum Sheet from Egypt: Preliminary Determination Analysis Memorandum for Aluminium Co. of Egypt/Egyptian Copper Works Company," dated October 6, 2020 at 5; *see also* Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Response to Sections B and C of the Antidumping Questionnaire," dated June 10, 2020 (Egyptalum-Egypt Copper-Egypt Copper's BCQR) at B-28.

⁴¹ See *Large Residential Washers from Mexico: Final Results of Antidumping Duty Administrative Review; 2018-2019*, 85 FR 81450 (December 16, 2020), and accompanying IDM at Comment 4.

⁴² See Egyptalum-Egypt Copper-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Response to Sections B and C of the Antidumping Questionnaire," dated June 10, 2020 at B-28 and Exhibit B-7.

⁴³ *Id.*

⁴⁴ See Petitioners' Case Brief at 26.

⁴⁵ *Id.*; *see also* Commerce's Remote Verification Questionnaire at 4.

- Failure to provide documentation at verification is grounds for AFA.⁴⁶
- Commerce should use the highest reported DINLFTPU expense as AFA.⁴⁷

Egyptalum-Egypt Copper's Rebuttal Argument:

- AFA is not warranted⁴⁸ because Egyptalum-Egypt Copper provided both source documentation and a sample calculation for its DINLFTPU expenses.⁴⁹
- In its questionnaire response, Egyptalum-Egypt Copper provided: (1) a copy of a transportation invoice to support, and a calculation of, the per-unit DINLFTPU expense reported for March 2019; and (2) a summary of the DINLFTPU expenses for each month of the POI.⁵⁰
- In its response to Commerce's Remote Verification Questionnaire, Egyptalum-Egypt Copper submitted the same documentation and supporting calculation provided in its section CQR, since Egyptalum-Egypt Copper applied the same monthly average per-unit DINLFTPU expense to the transactions identified in Commerce's Remote Verification Questionnaire.⁵¹
- Since Egyptalum-Egypt Copper explained its reporting methodology, provided a worksheet showing the monthly average per-unit DINLFTPU expenses during the POI, and Commerce did not issue follow-up requests for information, the application of partial AFA is not warranted.⁵²

Commerce's Position:

We agree with the petitioners. Egyptalum-Egypt Copper failed to provide the calculation worksheets and supporting documentation for the DINLFTPU expenses that were requested by Commerce in its Remote Verification Questionnaire.⁵³ Instead, Egyptalum-Egypt Copper provided information previously reported in its section C questionnaire response that relates to sales that were not being verified.⁵⁴

Verification is a spot-check of a respondent's information from which Commerce may draw conclusions regarding the overall accuracy and completeness of what was reported. Because Egyptalum-Egypt Copper failed to substantiate the reported DINLFTPU expenses examined during verification, we are applying the facts otherwise available in determining Egyptalum-Egypt Copper's DINLFTPU expenses pursuant to section 776(a)(2)(D) of the Act (respondent provides information that cannot be verified).

⁴⁶ See, e.g., *Certain Steel Threaded Rod from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 74 FR 8,907 (February 27, 2009), and accompanying Issues and Decision Memorandum at 22 (Comment 5).

⁴⁷ See Petitioners' Case Brief at 28.

⁴⁸ See Egyptalum-Egypt Copper-Egypt Copper's Rebuttal Brief at 10.

⁴⁹ *Id.*

⁵⁰ *Id.*; see also Egyptalum-Egypt Copper-Egypt Copper's BCQR at Exhibit C-8.

⁵¹ *Id.*

⁵² *Id.*

⁵³ See Commerce's Remote Verification Questionnaire to Egyptalum-Egypt Copper at 3 and 4.

⁵⁴ See Egyptalum-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Response to Sections B and C of the Antidumping Questionnaire," dated June 10, 2020 at Exhibit C-10.

Moreover, we are using an adverse inference in selecting from among the facts otherwise available. Section 776(b) of the Act provides that Commerce may use adverse inferences in selecting from among the facts otherwise available where a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information. Egyptalum-Egypt Copper did not provide the information requested for verification despite evidence that such information was available to it (evidenced by the fact that it provided such information for other sales in its section C questionnaire response). Thus, Egyptalum-Egypt Copper failed to cooperate to the best of its ability. As AFA, we set all of Egyptalum-Egypt Copper's DINLFTPU expenses for its U.S. sales equal to the highest DINLFTPU expense reported in the U.S. sales database.⁵⁵

Comment 4: U.S. Credit Expenses

Petitioners' Argument:

- Commerce should base Egyptalum-Egypt Copper's U.S. credit expenses on AFA because there are systemic errors with the U.S. payment dates that it reported.
- Payment records for one of two sales examined for verification do not support the reported payment date.⁵⁶ Verification is a "spot check" that is intended to confirm the accuracy of information submitted by a respondent.⁵⁷
- There are discrepancies between the payment dates in records provided in response to a supplemental questionnaire and the payment dates reported for two other U.S. sales.⁵⁸
- Based on the foregoing discrepancies, Commerce should recalculate Egyptalum-Egypt Copper's reported U.S. credit expenses, using, as AFA, the longest credit period reported in the U.S. sales database.⁵⁹

Egyptalum-Egypt Copper's Rebuttal Argument:

- AFA is not warranted because Egyptalum-Egypt Copper fully reported and documented the payment dates for its U.S. sales.⁶⁰
- The petitioner only identified three U.S. sales that appear to involve minor differences between the payment dates reported in the U.S. sales database and the payment dates in supporting payment documentation.⁶¹

⁵⁵ See Egyptalum-Egypt Copper-Egypt Copper's Calculation Memorandum at 3.

⁵⁶ See Petitioners' Case Brief at 28-29; *see also* Egyptalum-Egypt Copper's Remote Verification QR at Exhibit 6.

⁵⁷ See Petitioners' Case Brief at 29 (citing to *Certain Carbon and Alloy Steel Cut-to-Length Plate From Italy: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 82 FR 16,345 (April 4, 2017), and accompanying IDM at 49 (Comment 4), in which Commerce states that when it finds errors in the spot-checked sales traces, it undermines the reliability of information provided for sales that the Department did not specifically examine.

⁵⁸ See Egyptalum-Egypt Copper's Letter, "Common Alloy Aluminum Sheet from Egypt: Response to the Supplemental Section B and Section C Questionnaire," dated August 18, 2020 (Egyptalum-Egypt Copper's SBCQR) at Exhibit SSQ-20.

⁵⁹ *Id.* at 30.

⁶⁰ See Egyptalum-Egypt Copper's Rebuttal Brief at 11-12.

⁶¹ *Id.*

- The courts found that adverse inferences cannot be tied to an unreasonable expectation for data perfection, applied in the case of only “isolated” errors, or applied in the absence of substantial evidence that an error affects all transactions.⁶²
- The minor differences in question should not trigger the application of AFA to all U.S. sales. Rather, if necessary, Commerce should simply correct the payment dates for the above-referenced sales.

Commerce’s Position:

We disagree with the petitioners. There is no evidence to suggest that the three erroneous payment dates identified by the petitioners represent systematic errors. Record evidence shows that Egyptalum-Egypt Copper reported the correct payment dates for several other U.S. sales for which supporting documentation was provided, including one of the sales examined at verification.⁶³

Use of partial AFA under sections 776(a) and 776(b) of the Act is not appropriate. The single incorrect U.S. payment date found during verification does not provide a basis for determining that, as a whole, U.S. payment dates could not be verified.⁶⁴ Moreover, Egyptalum-Egypt Copper did not withhold or fail to timely submit, nor are there missing, U.S. payment dates.⁶⁵ Lastly, there is no evidence that Egyptalum-Egypt Copper failed to act to the best of its ability to report U.S. payment dates.

Accordingly, sections 776(a) and 776(b) of the Act do not warrant the application of partial AFA with respect to Egyptalum-Egypt Copper’s reported U.S. credit expenses. However, for the final determination, we recalculated the U.S. credit expenses using the correct payment dates for the U.S. sales with incorrect payment dates.⁶⁶

Comment 5: Interest Expense Ratio

Petitioners’ Argument:

- Despite multiple requests by Commerce, Egyptalum-Egypt Copper did not timely provide the fiscal year ended June 30, 2019 (FY 18-19) audited consolidated financial statements (consolidated statements), including notes and the auditor’s report, for its parent, Metallurgical Industries Holding Co. (MIH).⁶⁷

⁶² *Id.*; see also *Nippon Steel v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003); *NTN Bearing Corp.*, 74 F.3d 1204, 1208 (Fed. Cir. 1995); *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 276 F. Supp. 2d 1371 (CIT 2003); and *Fischer S.A. v. United States*, 700 F. Supp. 2d 1364, 1375 (CIT 2010).

⁶³ See, e.g., Egyptalum-Egypt Copper’s Remote Verification QR at Exhibit 6; and Egyptalum-Egypt Copper’s SBCQR at Exhibit SSQ-20.

⁶⁴ See Egyptalum-Egypt Copper’s Remote Verification QR at Exhibit 6.

⁶⁵ See, e.g., Egyptalum-Egypt Copper’s Letter, “Common Alloy Aluminum Sheet from Egypt: Response to the Supplemental Section B and Section C Questionnaire,” dated August 18, 2020 at Exhibit SSQ-20; and Egyptalum-Egypt Copper’s reported U.S. sales database “egyptalum_us03.sas7bdat,” dated September 9, 2020.

⁶⁶ See Egyptalum-Egypt Copper’s Calculation Memorandum at 4.

⁶⁷ See Petitioners’ Case Brief at 12-23.

- Contrary to Commerce’s instructions, Egyptalum-Egypt Copper did not provide MIH’s FY 18-19 or FY 17-18 consolidated financial statements in its section A questionnaire response or in its DQR.⁶⁸
- In its July 6 SAQR, Egyptalum-Egypt Copper did not include the English version of MIH’s FY 18-19 consolidated financial statements or the Arabic and English versions of the corresponding auditor’s report.⁶⁹
- Despite Commerce’s request for the English version of MIH’s FY 18-19 consolidated financial statements, including the notes and auditor’s report, in its August 20 SDQR, Egyptalum-Egypt Copper provided MIH’s standalone statements instead of its translated FY 18-19 consolidated statements.⁷⁰
- In its September 14 3SDQR, Egyptalum-Egypt Copper provided MIH’s FY 18-19 consolidated financial statements, including the auditor’s report. However, it inaccurately claimed that it had provided a “non-final” version of the consolidated financial statements in its August 20 SDQR when, in fact, that response included MIH’s standalone financial statements.⁷¹ Egyptalum-Egypt Copper did not provide a copy of the complete auditor’s report for MIH’s FY 18-19 consolidated statements.⁷²
- Because Egyptalum-Egypt Copper submitted MIH’s FY 18-19 consolidated statements so close to the *Preliminary Determination*, Egyptalum-Egypt Copper deprived Commerce of the opportunity to issue a supplemental questionnaire to explore or remedy important issues of a business proprietary nature involving the financial statements.⁷³
- As explained in *CR and CORE from Korea*, normally, Commerce allows a party to correct or improve its reporting, so long as time remains for submission of factual information.⁷⁴ However, in the instant case, the issues in question were exposed too late in the proceeding, when no time remained for the submission of new factual information.
- Egyptalum-Egypt Copper failed to cooperate by repeatedly failing to provide MIH’s FY 18-19 consolidated statements. Accordingly, as partial AFA and consistent with *Rubber from Mexico*, Commerce should assign Egyptalum-Egypt Copper the highest calculated financial expense rate for any of the financial statements on the record of this investigation.⁷⁵

⁶⁸ See Petitioners’ Case Brief at 14 (citing to Egyptalum-Egypt Copper’s June 17, 2020 section D questionnaire response (DQR) at Exhibit D-15).

⁶⁹ See Petitioners’ Case Brief at 14 (citing to Egyptalum-Egypt Copper’s July 6, 2020 supplemental section A questionnaire response (SAQR) at FSQ-19 and Exhibit FSQ-15).

⁷⁰ See Petitioners’ Case Brief at 14-15 (citing to Egyptalum-Egypt Copper’s August 20, 2020 first supplemental section D questionnaire response (SDQR) at 21-22 and Exhibit Supp. D-16).

⁷¹ See Petitioners’ Case Brief at 15-16 (citing to Egyptalum-Egypt Copper’s September 14, 2020 third supplemental section D questionnaire response (3SDQR) at 4-5 and Exhibit 3rd Supp. D-6.a; Egyptalum-Egypt Copper’s September 21, 2020 translation filing (September 21 translations) at Exhibit 2; and Kelley Drye & Warren LLP’s Letter, “Common Alloy Aluminum Sheet from Egypt — Petitioners’ Comments Regarding the Department’s Upcoming Preliminary Determination,” dated September 14, 2020 at 13-14).

⁷² See Petitioners’ Case Brief at 18 (citing to Egyptalum-Egypt Copper’s September 21 translations at Exhibit 2).

⁷³ See Petitioners’ Case Brief at 18 (citing to Egyptalum-Egypt Copper’s September 21 translations at Exhibit 2 (PDF page 28-29)).

⁷⁴ See Petitioners’ Case Brief at 21-22 (citing to *Notice of Final Results of Antidumping Duty Administrative Reviews: Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 66 FR 3540 (January 16, 2001), and accompanying IDM (*CR and CORE from Korea*) at Comment 7).

⁷⁵ See Petitioners’ Case Brief at 23 (citing to *Emulsion Styrene-Butadiene Rubber from Mexico: Final Affirmative Determination of Sales at Less Than Fair Value*, 82 FR 33062 (July 19, 2017), and accompanying IDM (*Rubber from Mexico*) at Comment 1).

Egyptalum-Egypt Copper's Rebuttal Argument:

- In its DQR, Egyptalum-Egypt Copper correctly calculated the financial expense rate based on MIH's FY 18-19 consolidated financial statements and provided a worksheet showing the calculation of the rate.⁷⁶ Contrary to the petitioners' claim, the exhibit included complete copies (not a summary) of both the Arabic and English versions of MIH's FY 18-19 audited consolidated income statement.⁷⁷
- Egyptalum-Egypt Copper's statement that it previously provided a "non-final" version of the financial statements is accurate. The response did not include the final version of MIH's FY 18-19 consolidated financial statements but, inadvertently, contained MIH's unconsolidated financial statements.
- Egyptalum-Egypt Copper acted to the best of its ability to provide all requested information, including voluminous source documents and English translations, while meeting short response deadlines, despite disruptions from the COVID-19 pandemic.
- The petitioners' allegation that the auditor's report is incomplete, is based on seven attachments referenced in the report, none of which relates to financial expenses.⁷⁸
- The petitioners' assertion regarding a possible provision, which involves business proprietary information, is speculative as no such provision is mentioned in the auditors' report.
- The petitioners' claim that Egyptalum-Egypt Copper's belated submissions deprived Commerce of the opportunity to pursue important issues is incorrect. Egyptalum-Egypt Copper provided MIH's FY 18-19 consolidated statements prior to the *Preliminary Determination* and in accordance with the applicable deadline.
- Commerce could have requested further information or explanations had it been unsatisfied with MIH's FY 18-19 consolidated statements, but it did not do so.
- *CR and CORE from Korea* involved false statements and new information provided at verification. Egyptalum-Egypt Copper did not make false statements and it provided all of the requested information before the remote verification took place.
- Egyptalum-Egypt Copper acted to the best of its ability; did not withhold information or impede Commerce's investigation; and the information it provided can be verified. Therefore, there is no basis for the application of AFA with respect to Egyptalum-Egypt Copper's reported financial expenses.

Commerce's Position:

We disagree with the petitioners. Because this issue involves Egyptalum-Egypt Copper's responses to our requests for MIH's consolidated financial statements and related information, we have described those responses, in chronological order, below.

In its DQR, Egyptalum-Egypt Copper provided a worksheet showing its calculation of the financial expense rate based on MIH's FY 18-19 consolidated statements (*i.e.*, the highest consolidation level); and, it reconciled the elements of the calculation to a copy of MIH's FY 18-

⁷⁶ See Egyptalum-Egypt Copper's Rebuttal Brief at 5-9.

⁷⁷ *Id.* at 5 (citing to Egyptalum-Egypt Copper's DQR at Exhibit D-15).

⁷⁸ *Id.* at 7 (citing to Egyptalum-Egypt Copper's September 21 translations at Exhibit 2).

19 audited consolidated income statement.⁷⁹ However, because Egyptalum-Egypt Copper provided a copy of only MIH's FY 18-19 audited consolidated income statement and the Arabic version of the consolidated statements in its July 6 SAQR, we requested a full English version of MIH's FY 18-19 consolidated statements.⁸⁰

However, the financial statements that Egyptalum-Egypt Copper provided in response to this request (in its August 20 SDQR), included an income statement that did not appear to be the same as the one used to calculate Egyptalum-Egypt Copper's financial expense rate in the DQR.⁸¹ Accordingly, we requested that Egyptalum-Egypt Copper explain why the two income statements were different and calculate the financial expense rate using the correct FY 18-19 consolidated statements for MIH.⁸²

In its September 14 3SDQR, Egyptalum-Egypt Copper provided MIH's FY 18-19 consolidated financial statements, including the auditor's report.⁸³ Egyptalum-Egypt Copper explained that although the income statement used to calculate the financial expense rate in the DQR is from the final version of MIH's FY 18-19 consolidated financial statements, it inadvertently did not include the final version of the consolidated financial statements in the August 20 SDQR.⁸⁴

While Egyptalum-Egypt Copper's description of the financial statements included in its August 20 SDQR might be considered inaccurate, it is inconsequential. Egyptalum-Egypt Copper rectified its error and, although it took several requests, Egyptalum-Egypt Copper provided MIH's FY 18-19 consolidated statements within the deadline designated in the third section D supplemental questionnaire and before the *Preliminary Determination*.⁸⁵

The financial statements submitted by Egyptalum-Egypt Copper include all of the individual statements, the audit report, and the footnotes. While the auditor's report for the FY 18-19 consolidated financial statements does not include the attachments referenced in the report, these attachments do not relate to any of the elements required to calculate the financial expense rate.⁸⁶ The attachments appear to be only supplemental in nature and not a required component of the audit report itself. Moreover, the report includes a brief explanation of each item in question and quantifies the item when applicable. Thus, the omission of the attachments did not affect the reported financial expense rate or Commerce's revision and use of the rate in the *Preliminary Determination*.⁸⁷

⁷⁹ See Egyptalum-Egypt Copper's DQR at Exhibit D-15.

⁸⁰ See Commerce's July 28, 2020 first section D supplemental questionnaire at 8.

⁸¹ See Egyptalum-Egypt Copper's August 20 SDQR at 21-22 and Exhibit Supp. D-16; see also Egyptalum-Egypt Copper's DQR at Exhibit D-15.

⁸² See Commerce's September 3, 2020 third section D supplemental questionnaire at 4.

⁸³ See Egyptalum-Egypt Copper's September 14 3SDQR at Exhibit 3rd Supp. D-6.a; see also Egyptalum-Egypt Copper's September 21 translations at Exhibit 2.

⁸⁴ See Egyptalum-Egypt Copper's August 20 SDQR at 21-22 and Exhibit Supp. D-16.

⁸⁵ See Egyptalum-Egypt Copper's September 14 3SDQR at Exhibit 3rd Supp. D-6.a; see also Egyptalum-Egypt Copper's September 21 translations at Exhibit 2.

⁸⁶ See Egyptalum-Egypt Copper's Rebuttal Brief at 7; see also Egyptalum-Egypt Copper's September 14 3SDQR at Exhibit 3rd Supp. D-6.a; and Egyptalum-Egypt Copper's September 21 translations at Exhibit 2) at 26-27).

⁸⁷ See Egyptalum-Egypt Copper's September 14 3SDQR at Exhibit 3rd Supp. D-6.d; see also Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Aluminum Co. of Egypt," dated October 6, 2020 at 2.

As noted in Comment 1 above, sections 776(a)(1) and 776(a)(2) of the Act provide that Commerce shall, subject to section 782(d) of the Act, apply facts otherwise available in reaching the applicable determination if necessary information is not on the record, or if an interested party: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act. Furthermore, section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from among the facts otherwise available.

We do not find that necessary information is missing from the record or that Egyptalum-Egypt Copper withheld requested information, failed to provide information in a timely manner, or significantly impeded this investigation. First, as noted above, the missing attachments do not relate to any of the elements required to calculate the financial expense rate. Second, all the information needed to calculate the financial expense rate has been provided. Moreover, in analyzing the record, as a whole, we do not find that the information provided by Egyptalum-Egypt Copper with respect to its financial expense rate calculation to be deficient. Third, although it took several requests from Commerce, Egyptalum did provide MIH's FY 18-19 consolidated financial statements in response to Commerce's request in the third section D supplemental questionnaire, within the designated deadline and before the *Preliminary Determination*.

Fourth, we do not find that Egyptalum-Egypt Copper significantly impeded the proceeding. We disagree with the petitioners' argument that Egyptalum-Egypt Copper's belated submission of MIH's FY 18-19 consolidated statements deprived Commerce of the opportunity to issue a supplemental questionnaire to explore or remedy important issues involving the auditor's report. Record evidence demonstrates that the "important issues" discussed in the auditor's report are directly related to investment activity, rather than financing activity.⁸⁸ Commerce has a well-established practice of excluding investment-related expenses from the reported cost of production (COP).⁸⁹ The reasoning is that, in calculating the COP and constructed value (CV), we seek to capture the cost of producing the foreign like product and subject merchandise, and to exclude the cost of investment activities.⁹⁰ Investment activities constitute a separate profit-making activity not related to the company's normal operations.⁹¹ Therefore, Commerce had no need to explore the issues in question because, consistent with its established practice, any expenses directly related to the investment activity mentioned in the auditor's report would have been excluded from the calculation of COP and CV. In fact, after its September 14 3SDQR, we did not ask Egyptalum-Egypt Copper to offer any additional explanation or documentation

⁸⁸ See Egyptalum-Egypt Copper's September 21 translations at Exhibit 2.

⁸⁹ See, e.g., *Polyethylene Terephthalate Resin From Brazil: Final Determination of Sales at Less Than Fair Value*, 83 FR 48285 (September 24, 2018), and accompanying IDM (*Pet Resin from Brazil*) at Comment 4; see also *Ripe Olives from Spain: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 28193 (June 18, 2018), and accompanying IDM (*Ripe Olives from Spain*) at Comment 26.

⁹⁰ See, e.g., *Pet Resin from Brazil* at Comment 4; see also *Notice of Final Determination of Sales at Less Than Fair Value: Live Cattle from Canada*, 64 FR 56739, 56758 (October 21, 1999).

⁹¹ See, e.g., *Pet Resin from Brazil* at Comment 4; see also *Ripe Olives from Spain* at Comment 26.

regarding MIH's FY 18-19 consolidated statements or its financial expense rate calculation. As certain of the information relating to this issue is business proprietary in nature, please refer to the Egyptalum-Egypt Copper Final Cost Memorandum for further discussion.⁹²

Also, the petitioners' reliance on *CR and CORE from Korea* and *Rubber from Mexico* is misplaced. In *CR and CORE from Korea*, the respondent made factual assertions that were found to be false at verification.⁹³ We did not find any of Egyptalum-Egypt Copper's assertions to be false. In *Rubber from Mexico*, the respondent stated that there was no highest level of consolidated financial statements in which its results were included, but clarified for the first time at verification that, in fact, there were such financial statements.⁹⁴ Egyptalum-Egypt Copper calculated its financial expense rate based on MIH's FY 18-19 consolidated statements (*i.e.*, the highest consolidation level). Therefore, these cases are inapposite.

Thus, we do not find it appropriate to base Egyptalum-Egypt Copper's financial expense rate on facts available pursuant to section 776(a) of the Act. Since we are not selecting from among the facts otherwise available in determining Egyptalum-Egypt Copper's financial expense rate, we have not addressed the provisions of section 776(b) of the Act.

V. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the above positions. If this recommendation is accepted, we will publish the final determination of the investigation and the final estimated weighted-average dumping margins in the *Federal Register*.



Agree



Disagree

3/1/2021

X 

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

⁹² See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination – Aluminum Co. of Egypt," dated March 1, 2021 (Egyptalum-Egypt Copper Final Cost Memorandum), at 1-2.

⁹³ See *CR and CORE from Korea* IDM at Comment 7.

⁹⁴ See *Rubber from Mexico* IDM at Comment 1.